

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

IA No.19/2021,  
IVN. P. 02/ALD/2020  
In  
CP No.(IB) 223/ALD/2019

IN THE MATTER OF :

SRI SUPRIYO KUMAR CHAUDHURI  
(LIQUIDATOR OF JVL AGRO INDUSTRIES LTD)

.....APPLICANT

VS

STATE BANK OF INDIA, SARG & ORS.

.....RESPONDENTS

IN THE MATTER OF :

BANK OF BARODA

.....APPLICANT

VS

SRI SUPRIYO KUMAR CHAUDHURI  
(LIQUIDATOR OF JVL AGRO INDUSTRIES LTD).

.....RESPONDENTS

ORDER DELIVERED ON:26.07.2021

CORAM:

HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER, JUDICIAL

Counsel for the Liquidator: Mr.Yash Tondon Advocate

Counsel for SBI: Mr. Pranjal Mehrotra, Advocate

Counsel for BOB: Mr. Utkarsh Srivastavs, Advocate

PER SE: MR. JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (JUDICIAL)

Order

1. The present application has been filed under Sec 35(1)(n) IBC read with Sec 60(5) IBC and the applicable provisions on behalf of the liquidator with the prayer to grant leave / sanction to the applicant to distribute an amount of Rs. 61 crores, less any applicable withholding tax, out of the accumulated cash profits lying in the bank accounts of the corporate debtor, to the stakeholders in accordance with Sec 53 IBC.

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2. It is the matter of record that in the present matter, the liquidation order has been passed by this Tribunal vide order dated 19.08.2020 and the applicant was appointed as the liquidator.
3. As per the averments made in the application, the first meeting of the Stakeholders' Consultation committee was held on 21.10.2020 and the members of the Stakeholders' Consultation committee comprising of representatives of State Bank of India and other Banks inquired as to when the amount lying in the Bank account of the Corporate Debtor of approximately Rs.99.35Crores should be distributed amongst the shareholders; to which the Liquidator informed that such distribution could only commence after filing of the Asset memorandum with this Tribunal and after expiry of the period of 90 days stipulated for receipt of the proposals for scheme of compromise for arrangements under Regulation 2B of IBBI (Liquidation Process) Regulations, 2016 r/w Section 230 of the Companies Act, 2013.
4. It is further stated that the asset memorandum of the Corporate Debtor was filed with this Tribunal on 2<sup>nd</sup> November, 2020 and 90 days' period stipulated for receipt of proposals for scheme of compromise or arrangement also expired on 17.11.2020 and no scheme of compromise or arrangement was received by the Applicant from any eligible person.
5. Then, the second SCC meeting of the Corporate Debtor was held on 10.12.2020 and the representative of SBI insisted that the accumulated profit aggregating to Rs.96.21crores lying in the bank account of the Corporate Debtor be distributed to the stakee holders in accordance with Section 53 of IBC, 2016 and the representatives of Standard Chartered Bank also supported this course of action; to which the legal advisor present at the meeting on behalf of the Liquidator

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informed the members of SCC that such distribution would not be possible without obtaining leave of this Tribunal. Further SBI has sent an email on 15.12.2020 enclosing a letter dated 11.12.2020 urging immediate distribution of funds lying in the Bank account of the Corporate Debtor.

6. Further stated that SBI has also offered to indemnify the Liquidator and the Corporate Debtor for any amount that are distributed to them out of the accumulated cash profits represented by the present balance in the bank account of the Corporate Debtor and have agreed to provide an undertaking to return such amount distributed to them if the need arises for any reason related to the liquidation process of the Corporate Debtor.
7. It is further contended that under Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016 the Liquidator can commence distribution once the list of stake holders and asset memorandum has been filed therefore the wording of section 53 and Regulation 42 (2) indicates that the stakeholders may be paid out of the proceeds from the sale of assets.
8. Further, the Counsel for the Liquidator also referred to one of the matter of NCLT, Kolkata Bench i.e. "*VARRASANA ISPAT LTD*" in which it was held that "*.....the "proceeds from the sale of asset" can only be realised after the sale concludes, which means distribution can also be done only after conclusion of sale and more so after the Liquidation realises the Liquidation value, therefore in our opinion the Liquidator cannot distribute the funds from the working capital and profit to the stakeholders until assets have been liquidated and the liquidator realises the complete liquidation value.*"

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9. It is further submitted that the estimated amount of liquidation cost for a period of one year from the date of commencement of liquidation has been prepared by Liquidator aggregating to Rs. 21.95 crores. The said estimated cost of liquidation is less than the accumulated cash profit amount of Rs.96.21crores, thus the Corporate Debtor has surplus funds available after setting aside the estimated liquidation cost for one year and other cost, which may be distributed to the stake holders in accordance Section 53 of IBC and the Liquidator has also not commenced sale of any assets comprising the Liquidation estate.

10. Thus, the Liquidator filed the present application seeking clarification whether the accumulated cash profit presently lying in the bank account of the Corporate Debtor which are in excess of liquidation cost can be distributed by the liquidator to the stakeholders u/s 53 subject to deduction of withholding tax as may be applicable, pending sale of assets forming part of liquidation estates and realisation of proceeds thereof.

11. In reply to the averments made, Ld. Sr. Counsel Sh. Anurag Khanna appeared on behalf of State Bank of India and contended that SBI , being one of the major stakeholder in the liquidation process of the corporate debtor and stated that when the order of liquidation was made , the corporate debtor was not a going concern and there was a credit balance of around Rs. 99.35 crores in the bank account of the corporate debtor, thus argued that the funds lying in the bank accounts of the corporate debtor be directed to be disbursed amongst the shareholders, keeping aside the liquidation costs in accordance with law.

12. It is further submitted that Sec 53 of the IBC, 2016 clearly provides for distribution of assets of the corporate debtor and delineates the liquidation

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waterfall mechanism in cases where there is a sale of the liquidation assets and further submitted that the judgment referred by the counsel for the liquidator i.e Varrsana Ispat Ltd. is not applicable in the present case as the same was rendered in a case where the corporate debtor was directed to be sold as a going concern.

13. It is further argued that the amount of Rs. 61 crores may be released and the remaining amount which is under contest shall be the subject matter of the application and no order is being prayed for the remaining amount.

14. Further, an Intervention application has also been filed as IVN. P.02/ALD/2021 on behalf of Bank of Baroda u/s 60(5) as being a Financial Creditor of Corporate Debtor and a member of CoC, whose security interest stands relinquish as part of liquidation estate and has a substantial and vital interest in the relief relating to distribution of accumulated cash balances in the bank account of the Corporate Debtor.

15. The Applicant i.e Bank of Baroda has filed its claim as a secured financial creditor which was duly admitted and the applicant was also part of CoC holding 26.38% in the CoC of the Corporate Debtor and has intimated its decision to relinquish the applicant security interest in respect of all the properties of the Corporate Debtor charged to the Applicant on *pari passu* basis with other consortium lenders of Bank of Baroda.

16. Ld. Sr. Counsel Mr. Naveen Sinha appearing for Bank of Baroda states that he supports the claim which has been made by the liquidator in the prayer clause i.e to distribute an amount of Rs. 61 crores less any applicable withholding tax, out of the accumulated cash profits lying in the bank accounts of the corporate

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debtor, to the stakeholders in accordance with Sec 53 IBC. Further submitted that the prayer sought by the Liquidator in the Application are legitimate and are required to be granted, as under the Liquidation Regulations, the Liquidator can commence distribution once the list of stakeholders and asset memorandum have been filed with the Tribunal. And in the present matter, the accumulated funds are lying in the account in the Corporate Debtor for a long time through pre-CIRP and CIRP period, the asset memorandum of the Corporate Debtor has also been filed before the Tribunal and further 90 days period stipulated for receipts of proposals for scheme of compromise for arrangement has already expired, thus the accumulated cash funds and subsequent proceeds of the Corporate Debtor are required to be distributed in terms of water fall mechanism stipulated u/s 53 of IBC.

17. Further Sh. Naveen Shina, Ld Sr. Counsel appearing for Bank of Baroda and Sh. Anurag Khaana, Ld Sr. Counsel appearing for State Bank of India referred to the relief clause of the present application and argued that even the liquidator in its the prayer clause (a) has sought permission to distribute the amount of Rs. 61 crores, less any applicable withholding tax, out of the accumulated cash profits as mentioned in the said prayer and therefore nothing contrary can be argued on his behest.

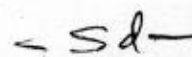
18. After hearing the learned counsels for the parties, this Adjudicating Authority observes that Regulation 42 of the IBBI (Liquidation Process) Regulation, 2016 provides that the Liquidator can commence with the distribution once the list of stakeholders and asset memorandum have been filed with the Tribunal and in the present case, it is a matter of record that it has already been done and filed before this Tribunal.

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19. Further, since the corporate debtor in liquidation is not a going concern and assets which are to be distributed are in the form of liquid assets and are non saleable, thus this Adjudicating Authority is of the opinion that the Code does not bar such distribution as such distribution will not hamper the liquidation process of the corporate debtor.

20. Thus, this Tribunal is of the opinion that as the amount to be distributed is in excess of the liquidation cost as estimated by the liquidator and is to be distributed to them who are entitled to the benefit of the distribution of liquidation proceedings, therefore this Adjudicating Authority allows the Applicant to distribute an amount of Rs. 61 crores, less any applicable withholding tax, out of the accumulated cash profits lying in the bank accounts of the corporate debtor, to the stakeholders in accordance with the waterfall mechanism as specified under Sec 53 of the Insolvency and Bankruptcy Code, 2016.

21. With the above observations, IA No. 19/2021 is allowed and stands disposed of.



**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 26.07.2021**

Swati Gupta  
(LRA)